

# Memorial Dedication for Nancy Rhoden

RUTH MACKLIN\*

An individual's contribution to a field of scholarship normally spans a professional lifetime. For Nancy Rhoden, that lifetime was tragically short. Nevertheless, her contributions to the field of bioethics surpass, in quantity and quality, those of many accomplished scholars whose output has continued for three or four decades longer.

Bringing philosophical background and insights to her legal scholarship, Nancy Rhoden published articles and chapters on the rights of mental patients, pregnant women, handicapped infants, and patients' families. She wrote about forced medical and psychiatric treatments, abortion, birth, and death. The numerous, highly regarded journals in which her work appeared include the *California Law Review*,<sup>1</sup> the *Yale Law Journal*,<sup>2</sup> and the *Harvard Law Review*.<sup>3</sup>

Nancy Rhoden's writings are informed by her thorough familiarity with the literature in philosophy, not only philosophical ethics but also philosophy of mind and decision theory. In addition, she engaged in empirical research in conjunction with her legal and philosophical studies. In research efforts somewhat unusual for a lawyer-ethicist, Professor Rhoden obtained a yearlong grant from the German Marshall Fund for travel to Sweden, Great Britain, and various medical centers in the United States. In that research project, she interviewed experts in neonatology and devised the framework for different decision-making strategies described in her article *Treating Baby Doe: The Ethics of Uncertainty*.<sup>4</sup>

Soon after her successful completion of that research project, Professor Rhoden was awarded another highly competitive grant, this time from the National Endowment for the Humanities and the National Science Foundation. This enabled her to spend a year in the clinical setting at Albert Einstein College of Medicine and Montefiore Hospital in the Bronx, New York. Again she conducted interviews with physicians and other health professionals, this time in the field of obstetrics. With colleagues from pediatrics and bioethics, she helped to establish Perinatal Law and Ethics Rounds, a regularly scheduled educational conference for physicians, nurses, trainees, and medical students, which still flourishes today. Writing about decisionmaking in both obstetrics and neonatology, Nancy Rhoden sketched different decisionmaking strategies adopted by physicians: the "maximin" strategy or "wait until certainty" approach; the "only hope" approach; the "statistical prognosis" strategy; and the "individualized prognostic" strategy.

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\* Professor of Bioethics, Department of Epidemiology and Social Medicine, Albert Einstein College of Medicine.

1. Rhoden, *The Judge in the Delivery Room: The Emergence of Court-Ordered Caesareans*, 74 CALIF. L. REV. 1951 (1986).

2. Rhoden, *Trimesters and Technology: Revamping Roe v. Wade*, 95 YALE L.J. 639 (1986).

3. Rhoden, *Litigating Life and Death*, 102 HARV. L. REV. 375 (1988).

4. Rhoden, *Treating Baby Doe: The Ethics of Uncertainty*, 16 HASTINGS CENTER REP. 34 (Aug. 1986).

I first met Nancy when she spent a year as a postdoctoral fellow at the Hastings Center, where I was then on staff. Her research project focused on the right of mental patients to refuse antipsychotic medication, culminating in the publication of *The Right to Refuse Psychotropic Drugs* in the Harvard Civil Rights-Civil Liberties Law Review.<sup>5</sup> From that time to the time of her death, we were friends and colleagues. As one of the professional staff at the Hastings Center, I intruded on her research by asking her to make presentations at project group meetings I was directing. Her contributions enhanced the Hastings Center conferences, while her year at the Center cemented her developing interest in bioethics and resulted in her chosen career focus. In reciprocity for my intrusions, Nancy asked me to read drafts of her many writings, which I did with pleasure and intellectual profit. She looked to me for critical comments on the philosophical aspects of her work, but I always learned something from her articles, even in my own field. Our personal and collegial friendship lasted ten years.

Although a long-standing advocate of civil liberties and individual rights, Nancy Rhoden refused to permit ideology to overpower reason. Concerning the right of psychiatric patients to refuse drugs, she wrote:

The right to refuse bears its own potential for abuse: it could become an excuse for custodial care, or for releasing patients unable to fend for themselves to "community care," often a euphemism for streets and flop-houses. Without the funding, care and dedication necessary to accomplish substantial reforms of the public mental health system, granting patients one more libertarian right to be left alone will not be adequate.<sup>6</sup>

Despite her stalwart defense of the right of pregnant women to refuse medical and surgical interventions deemed necessary for the life or health of the fetus, Rhoden expressed deep pessimism based on her legal and empirical research:

Except when the doctor's recommendation is really optional, the woman's choices may soon be reduced to gracefully submitting to the medical recommendation, resulting in the appearance of informed consent. If she is compelled to submit, there is not even this comforting fiction. Hence, in obstetrics, informed consent may soon pass from being a necessary illusion to an illusion that is not necessary at all.<sup>7</sup>

Nancy Rhoden took her boldest stance in her last major law review article, *Litigating Life and Death*.<sup>8</sup> She made a strong but controversial case for family discretion in decisionmaking for incapacitated patients. Arguing that "courts have deferred to the medical status quo, which is strongly pro-treatment and thus anti-family in cases of conflict,"<sup>9</sup> she proposed that the legal presumption should be in favor of the choice of a close family member.<sup>10</sup> She buttressed this conclusion with a careful legal and ethical analysis, along with her contention

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5. Rhoden, *The Right to Refuse Psychotropic Drugs*, 15 HARV. C.R.-C.L.L. REV. 363 (1980).

6. *Id.* at 409.

7. Rhoden, *Informed Consent in Obstetrics: Some Special Problems*, 9 W. NEW ENG. L. REV. 67, 88 (1987).

8. Rhoden, *supra* note 3.

9. *Id.* at 436.

10. *Id.* at 437.

that "the preferences of most individuals, and our society's history and values, lend far more support to family decisionmaking than to the medical predominance inherent in our medical and legal status quo."<sup>11</sup>

Nancy Rhoden's death is a loss to her family, her friends, her colleagues, and the fields of law and bioethics. No one familiar with her work will be able to confront any of the numerous topics she addressed without thinking of the lasting contributions she made in her short, productive career.

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11. *Id.* at 446.

